



**IT IS ORDERED as set forth below:**

**Date: March 13, 2013**

**Paul W. Bonapfel  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: 13-50120-PWB
	:	
VINCENT P. PHILLIPS,	:	
	:	INVOLUNTARY PETITION
	:	UNDER CHAPTER 7 OF THE
Alleged Debtor.	:	BANKRUPTCY CODE

**ORDER DISMISSING CASE AND BARRING ANTHONY THOMAS, JAMES WALKER, COURTNEY DERRELL JOHNSON, ERICK NEILSON, SHARON WILLIAMS AND LATRON PRICE FROM FILING ANY FUTURE INVOLUNTARY PETITIONS AGAINST VINCENT P. PHILLIPS**

This case arises upon an involuntary petition for relief under Chapter 7 of the Bankruptcy Code filed on January 2, 2013, by Anthony Thomas and James Walker against Vincent P. Phillips. It is the third involuntary petition against Mr. Phillips since December 5, 2011.

For reasons announced at the hearing on March 5, 2013, and set forth herein, the Court will dismiss the petition, will enjoin certain parties and others acting in active concert or participation with them from filing any future involuntary petitions under the Bankruptcy Code

against Mr. Phillips, and will grant prospective relief from the automatic stay of 11 U.S.C. § 362(a) in any future bankruptcy case of Mr. Phillips with regard to a condominium unit known generally as Unit 411, 250 Park Avenue West, Atlanta, Georgia, 30313 (the “Condominium Unit”). In addition, in order to provide an opportunity for the United States Attorney, the United States Trustee, and other parties to invoke the processes of this Court with regard to matters addressed below, the Court will retain jurisdiction of the case after its dismissal until further Order of the Court.

In the first filing, Case No. 11-84836-pwb, the petitioning creditors, Eric Neal, Chad Smith, and Sara Norman, failed to obtain issuance of a summons and serve the summons and petition upon Mr. Phillips. When the Clerk of the Bankruptcy Court mailed a copy of a summons to one of the petitioning creditors, Mr. Neal, the mail was returned, marked “Return to Sender, No Such Number, Unable to Forward.” The Court dismissed Case No. 11-84836-pwb after a hearing on January 10, 2012, at which neither the petitioning creditors nor Mr. Phillips appeared.

On March 6, 2012, Erick Neilson and Sharon Williams, as petitioning creditors, filed a second involuntary petition under chapter 7 of the Bankruptcy Code against Vincent P. Phillips, Case No. 12-56190-pwb. In the second case, the Clerk’s office provided a summons to Mr. Latron Price, who filed the involuntary petition in person in the Clerk’s office. In addition, the Clerk’s office mailed a copy of a summons to both Neilson and Williams, at the addresses listed for them on the petition, but the mail was returned marked, “Return to Sender, Not Deliverable as Addressed, Unable to Forward.” Because the circumstances suggested that the filing of the cases could be an abuse of the Bankruptcy Code, the Court entered an Order on May 11, 2012, directing Erick Neilson, Sharon Williams, Vincent P. Phillips, and Latron Price to appear at a hearing on

June 5, 2012, and show cause why the Court should not dismiss the petition and bar the filing of any future involuntary petition against Vincent Phillips by these petitioning creditors.

The Court dismissed the second case by Order dated June 13, 2012 [Case No. 12-56190-pwb, Docket No. 9] after a hearing at which the petitioning creditors, Mr. Phillips, and Latron Price failed to appear. In addition, the Court's June 13, 2012 Dismissal Order provided, "Erick Neilson, Sharon Williams, and Latron Price, and any persons acting in concert or participation with any of them who receives actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from the filing of any involuntary petition for relief under Title 11 of the U.S. Bankruptcy Code against Vincent P. Phillips unless this Court permits such a filing for cause shown."

The involuntary petition against Mr. Phillips in this third case was filed on January 2, 2013, by Anthony Thomas and James Walker. As in the previous cases, the Clerk's office had to provide a summons to the person who delivered and filed the involuntary petition, Courtney Derrell Johnson. And as in the previous cases, no one filed a certificate of service demonstrating service of the summons and involuntary petition upon Mr. Phillips.

On February 15, 2013, the Court entered an Order [Docket No. 4] expressing its concerns about the filing of this case and scheduling a hearing for March 5, 2013. The Order required Mr. Phillips, the petitioning creditors in this case (Anthony Thomas and James Walker), the petitioning creditors in the second case (Erick Neilson and Sharon Williams), and the persons who personally delivered the second and third petitions to the Clerk's office (Latron Price and Courtney Darrell Johnson) to appear and show cause why the Court should not (1) dismiss this case; (2) bar the filing of any future involuntary petition against Mr. Phillips; (3) hold them in

contempt for violation of the Court's June 13, 2012 Order in the second case that barred the filing of an involuntary petition against Mr. Phillips without leave of court; and (4) refer this matter to the United States Trustee and the United States Attorney for investigation.

Mr. Phillips and his attorney appeared at the hearing, as did an attorney for the United States Trustee and a legal assistant with the office of the United States Attorney. None of the other parties appeared. Mr. Phillips represented that he had not been aware of the first and second cases when they were pending and that he did not know any of the other identified persons except Latron Price.

The Court will dismiss the petition in this case because of the failure of the petitioning creditors to effect service of the summons and petition on Mr. Phillips and their failure to prosecute the petition.

Further, it is appropriate to renew and continue the bar against the filing of any involuntary petition for relief under Title 11 against Vincent P. Phillips as set forth in the Court's June 13, 2012 Order entered in 12-56190-pwb, and extend the bar to include Anthony Thomas, James Walker, and Courtney Derrell Johnson, and any persons acting in concert or participation with them.

Dismissal of the case does not end the matter, however, because it appears to the Court that some or all of the parties have engaged in conduct that is either an abuse of the provisions of the Bankruptcy Code or willful contempt of this Court or both.

The Court's June 13, 2012 Dismissal Order in the second case enjoined Erick Neilson, Sharon Williams, and Latron Price, "and any persons acting in concert or participation with any of them" who received actual notice of the Order by personal service or otherwise from the filing

of an involuntary petition against Mr. Phillips unless the Court permitted such a filing for cause shown. It appears to the Court that the filing of this case violated that Order.

Further, it appears to the Court that some or all of the parties may have engaged in conduct that violates 18 U.S.C. § 157. Section 157 of Title 18 of the United States Code provides:

A person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so—

- (1) files a petition under title 11, including a fraudulent involuntary petition under section 303 of such title;
- (2) files a document in a proceeding under title 11; or
- (3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title,

shall be fined under this title, imprisoned not more than 5 years, or both.

The original involuntary petition in this case is a copy of the petition filed in the second case. The preparer of the third petition modified a copy of the petition in the second case by using liquid paper to remove the names of Erick Neilson and Sharon Walker (the petitioning creditors in the second case) and then manually writing the names of the petitioning creditors in this case. This fact establishes a connection between the two cases from which a strong inference arises that one or more persons are acting together to cause the filing of these involuntary petitions against Mr. Phillips. Parties who have done so are in contempt of this Court's June 13, 2012 Dismissal Order.

The utter failure of the petitioning creditors in each of the cases to effect service or to appear in response to the Court's Orders establishes a strong inference that the purpose of the filings is for some reason other than obtaining legitimate relief under the Bankruptcy Code. A

logical conclusion is that the purpose has been to obtain the benefits of the automatic stay of 11 U.S.C. § 362(a) with regard to the Condominium Unit Mr. Phillips owns.<sup>1</sup> Filing an involuntary petition to invoke the automatic stay with no intent of prosecuting the case is an abuse of the provisions of the Bankruptcy Code. These same circumstances indicate that one or more of the parties have repeatedly filed these involuntary petitions as part of a fraudulent scheme to prevent foreclosure on the Condominium Unit, which could be a violation of 18 U.S.C. § 157.

Mr. Phillips at the hearing represented that he had no knowledge at all of the filing of the first two cases and that he did not participate in the filing of this third one. In view of this representation, the Court declines to conclude that he is, or has been, a participant in the filings that have occurred. The Court notes, however, that it is not making any findings of fact or conclusions of law with regard to whether Mr. Phillips did or did not have a role in these filings. The Court cannot make any such determination based on the record before it.

All of the parties named in the Court's show cause order entered in this case on February 15, 2013, except Mr. Phillips, to wit, Anthony Thomas, James Walker, Courtney Derrell Johnson, Erick Neilson, Sharon Williams, and Latron Price, are in contempt of this Court for failure to appear at the March 5, 2013 hearing. The Court sees no reason at this time for further civil proceedings against these parties with regard to such contempt. This determination is without prejudice to the rights of the United States Attorney or the United States Trustee to pursue criminal or civil contempt remedies against such parties.

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<sup>1</sup>The *filing* of a bankruptcy case results in the imposition of the automatic stay under 11 U.S.C. § 362(a). Thus, the automatic stay arises merely because of the filing of an involuntary petition, regardless of whether the petitioning creditors serve it on the alleged debtor. A debtor might find it useful to have an involuntary petition filed, as opposed to filing a voluntary petition, so that he is in a position to disclaim any responsibility for it.

In view of the circumstances described above, it is appropriate for this Court to retain jurisdiction after the dismissal of the case so that the processes of this Court are available to the United States Attorney and the United States Trustee in connection with any further investigation of these matters that they deem appropriate and the pursuit of any appropriate sanctions. Further, any party in interest affected by this proceeding may similarly use the processes of this Court with regard to any investigation they may wish to undertake or with regard to the pursuit of any relief to which they may be entitled. The Court will retain jurisdiction for not less than 60 days from the date of entry of this Order for such purposes. In the absence of any request within such time for an extension of the Court's retention of jurisdiction, the Court may close the case without notice and without a hearing.

Mr. Phillips represented at the hearing that he no longer resides in the Condominium Unit and that it is worth less than the amount of debts that are secured by it. The Condominium Unit appears to be subject to a deed to secure debt held by Carrington Mortgage Services and to homeowner's association fees owed to Centennial Park West Homeowner's Association, Inc. Accordingly, because he no longer has any interest in residing in the property and it has no economic value to the estate in any future bankruptcy case, the Court will, pursuant to 11 U.S.C. § 105(a), grant prospective *in rem* relief with regard to the Condominium Unit from the automatic stay of 11 U.S.C. § 362(a) in any future bankruptcy case of Mr. Phillips or of any other debtor claiming an interest in the Condominium Unit by or through Mr. Phillips.

It is, therefore, hereby **ORDERED and ADJUDGED** as follows:

1. This case is hereby **DISMISSED** for failure of the petitioning creditors to effect service of the summons and petition as Rule 1010(a) of the Federal Rules of Bankruptcy Procedure

requires.

2. Erick Neilson, Sharon Williams, Latron Price, Anthony Thomas, James, Walker, and Courtney Derrell Johnson, and any person acting in concert or participation with any of them who receives actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from the filing of any involuntary petition for relief under Title 11 of the U.S. Bankruptcy Code against Vincent P. Phillips unless this Court permits such a filing for cause shown.

3. The Court will retain jurisdiction of this case, pending further Order, to permit the United States Attorney and the United States Trustee to use the processes of this Court, including but not limited to Rule 2004 of the Federal Rules of Bankruptcy Procedure, in connection with any further investigation of the matters addressed hereinabove that they deem appropriate and to seek appropriate sanctions. Further, any party in interest affected by this proceeding may similarly use the processes of this Court with regard to any investigation it may wish to undertake or with regard to the pursuit of any relief to which it may be entitled. The Court will retain jurisdiction for not less than 60 days from the date of entry of this Order for such purposes. In the absence of any request within such time for an extension of the Court's retention of jurisdiction, the Court may close the case without notice and without a hearing.

4. The Court's retention of jurisdiction does not affect the termination of the automatic stay upon dismissal of the case pursuant to 11 U.S.C. § 362(c). The dismissal of the case means that any property of Mr. Phillips is no longer property of the estate such that the automatic stay of any act against his property is terminated under 11 U.S.C. § 362(c)(1). The dismissal of the case terminates the stay of any other act under 11 U.S.C. § 362(c)(2). Thus, the automatic stay does not apply in any respect with regard to Mr. Phillips or his property.



5. The automatic stay of 11 U.S.C. § 362(a) shall not apply, and is hereby prospectively terminated, with regard to any act against the Condominium Unit in any future bankruptcy case (whether voluntary or involuntary) in which the debtor or alleged debtor is Mr. Phillips or in which the alleged debtor or debtor has or claims to have any interest in the Condominium Unit arising by or through a transfer or assignment of Mr. Phillips' interest in the Condominium Unit, other than any interest acquired through foreclosure of his interest or the transfer or assignment of his interest through legal process such as levy and sale.

**[End of Order]**

Distribution List

Anthony Thomas  
758 Maner Terrace  
Smyrna, GA 30080

James Walker  
3920 Club Dr  
Duluth, GA 30096

Courtney Derrell Johnson  
620 Peachtree St., Apt. 1501  
Atlanta, GA 30308-2374

Erick Neilson  
6129 Parkridge Drive  
Atlanta, Ga 30319

Sharon Williams  
3917 Flagler Avenue  
Atlanta, Ga 30309

Vincent P. Phillips  
Unit 411  
250 Park Avenue West  
Atlanta, GA 30313

Vincent P. Phillips  
P.O. Box 20084  
Atlanta, GA 30325

Vincent P. Phillips  
2200 Fairburn Rd., SW  
Atlanta, GA 30331

Vincent Phillips  
2135 Defoor Hills Rd., NW  
Atlanta, GA 30318-2218

Vincent Phillips  
1218 Fairburn Rd., SW  
Ste. 203  
Atlanta, GA 30331

Vincent Phillips  
936 Harwell Street  
Atlanta, GA 30314-2912

Latron Price  
2675 Penders Ridge Trail  
Ellenwood, GA30294-6233

Latron Price  
Rain Makers, Inc.  
44 Broad Street, Ste. 1020  
Atlanta, GA 30303

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